



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0805; FRL-9832-4]

Approval of Air Quality Implementation Plans; Indiana; Approval of "Infrastructure" SIP with Respect to Source Impact Analysis Provisions for the 2006 24-Hour PM_{2.5} NAAQS.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA), EPA is taking final action to approve portions of submissions made by the Indiana Department of Environmental Management (IDEM) to address the section 110(a)(1) and (2) requirements of the CAA, often referred to as the "infrastructure" state implementation plan (SIP). Specifically, we are finalizing the approval of portions of IDEM's submissions intended to meet certain requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) of the CAA with respect to the 2006 24-hour PM_{2.5} national ambient air quality standards (2006 PM_{2.5} NAAQS). Among other provisions, these sections of the CAA require states to perform source impact analyses as part of their prevention of significant deterioration (PSD) programs. EPA is finalizing approval of Indiana's submissions intended to

satisfy this requirement. The proposed rule associated with this final action was published on August 2, 2012.

DATES: This final rule is effective on [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2009-0805. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly-available only in hard copy. Publicly-available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang at (312) 886-0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0258, chang.andy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this action?
- II. What is the result of IDEM's SIP-approved update to the definition of the 2006 PM_{2.5} NAAQS?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

I. What is the background for this action?

Under sections 110(a)(1) and (2) of the CAA, and implementing EPA policy, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2006 PM_{2.5} NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for particulate matter already met those requirements.

EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" (2007 Memo). On September 25, 2009, EPA issued additional guidance pertaining to the 2006 PM_{2.5} NAAQS entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006

24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)" (2009 Memo). The SIP submissions referenced in this rulemaking pertain to the applicable requirements of sections 110(a)(1) and (2) of the CAA. Indiana made its infrastructure SIP submission for the 2006 $PM_{2.5}$ NAAQS on October 20, 2009, and provided supplemental submissions to EPA on June 25, 2012, and July 12, 2012.

On August 2, 2012, EPA published its proposed action on Region 5 states' submissions (*see* 77 FR 45992). Notably, we proposed to find that Indiana had met the applicable infrastructure SIP requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) concerning state PSD programs generally, thereby satisfying the requirement that the State has an adequate PSD program pursuant to these section for the 2006 $PM_{2.5}$ NAAQS.

During the comment period for the August 2, 2012, proposed rulemaking, EPA received five comment letters, one of which observed that the Indiana SIP was insufficient for purposes of the State's PSD program for the 2006 $PM_{2.5}$ NAAQS.¹ The commenter noted that 326 Indiana Administrative Code (IAC) 2-2-5(a)(1) requires an analysis of a new or modified source's emissions demonstrating that the emissions will not cause or contribute to

¹ EPA addressed the remainder of the comment letters in a separate rulemaking (*see* 77 FR 65478).

air pollution in violation of any ambient air quality standard, as designated in 326 IAC 1-3. The language contained in 326 IAC 1-3 explicitly referenced only the 1997 PM_{2.5} NAAQS, and not the 2006 PM_{2.5} NAAQS of 35 micrograms per cubic meter. Therefore, a literal read of Indiana's PSD regulations at the time of EPA's proposed rulemaking for the 2006 PM_{2.5} NAAQS infrastructure SIP indicated that a source impact analysis would only need to comply with the 1997 PM_{2.5} NAAQS. The commenter did note that 326 IAC 2-1.1-5 contains language that would prohibit issuance of a registration, permit, modification approval, or operating permit revision if issuance would allow a source to cause or contribute to a violation of the NAAQS. However, 326 IAC 2-1.1-5 is currently not in the SIP, and the language contained therein had not been submitted by Indiana for incorporation into the SIP.

As a result of this comment received in response to our August 2, 2012, proposed rulemaking, we did not promulgate final action on this limited aspect of Indiana's infrastructure SIP in our October 29, 2012, final rulemaking (see 77 FR 65478). We did, however, promulgate final action on the majority of all other applicable elements of Indiana's infrastructure SIP. In the October 29, 2012, rulemaking, we committed to address the source impact analysis requirements of Indiana's PSD program in a separate action; this final rulemaking serves as that action.

II. What is the result of IDEM's SIP-approved update to the definition of the 2006 PM_{2.5} NAAQS?

Integral to the applicable infrastructure SIP requirements for IDEM's PSD program with respect to the source impact analysis requirements for the 2006 PM_{2.5} NAAQS was the need for the state to update its definitions contained in 326 IAC 1-3 to reflect the 2006 PM_{2.5} NAAQS and submit these revisions for incorporation into the SIP. On April 19, 2013, EPA published its direct final approval of revisions to IDEM's SIP at 326 IAC 1-3-4(b)(8) that among other things, contained the Federally promulgated 2006 PM_{2.5} NAAQS codified at 40 CFR 50.13 (see 78 FR 23492). Notably, the revisions aligned the state and Federal ambient air quality standards, calculations for compliance, and ambient concentration collection methods for the 2006 PM_{2.5} NAAQS. No adverse comments were received on this notice, and the SIP revisions became effective on June 18, 2013.

As a result of EPA's April 19, 2013, action, the requirements contained in 326 IAC 2-2-5(a)(1), *i.e.*, the requirement for an analysis of a new or modified source's emissions demonstrating that the emissions will not cause or contribute to air pollution in violation of any ambient air quality standard, as designated in 326 IAC 1-3, now also apply to the 2006 PM_{2.5} NAAQS, as codified in 40 CFR 50.13. Therefore, Indiana has met the PSD program source impact analysis

requirements for sections 110(a)(2)(C), 110(a)(2)(D)(ii), and 110(a)(2)(J) of the CAA with respect to the 2006 PM_{2.5} NAAQS.

III. What action is EPA taking?

For the reasons discussed above, EPA is taking final action to approve portions of Indiana's infrastructure SIP submissions for the 2006 PM_{2.5} NAAQS with respect to sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) of the CAA. Specifically, we are finalizing approval of the relevant portions of Indiana's submissions because the state's SIP-approved PSD program now requires a source impact analysis for the Federally promulgated 2006 PM_{2.5} NAAQS codified at 40 CFR 50.13.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER

OFFICE: INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Ozone,
Particulate Matter, Reporting and recordkeeping requirements.

Dated: June 25, 2013

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770 the table in paragraph (e) is amended by revising the entry for "Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM_{2.5} NAAQS".

The revised text reads as follows:

§ 52.770 Identification of plan.

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(e) * * *

EPA-Approved Indiana Nonregulatory and Quasi-Regulatory Provisions

Title	Indiana Date	EPA Approval	Explanation
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Section 110(a)(2) Infrastructure Requirements for the 2006 24-Hour PM _{2.5} NAAQS.	10/20/2009, 6/25/2012, 7/12/2012	[INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are finalizing approval of the PSD source impact analysis requirements of section 110(a)(2)(C), (D)(i)(II), and (J), but are not finalizing action on the visibility protection requirements of (D)(i)(II), and the state board requirements of (E)(ii). We will address these requirements in a separate action.
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[FR Doc. 2013-16512 Filed 07/09/2013 at 8:45 am; Publication
Date: 07/10/2013]